

# Wisconsin Department of Regulation & Licensing

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## SELECTED STATUTES RELATING TO ANNUAL CERTIFICATION OF CEMETERIES OF RELIGIOUS SOCIETIES, FORM #1787

**157.11(9g)(c). CARE FOR CEMETERY LOTS.** Except as provided in sub. (11), any cemetery authority that sells a cemetery lot on or after November 1, 1991, shall deposit 15% of each payment of principal into a care fund under par. (a) within 30 days after the last day of the month in which the payment is received, except as provided in sub. (7)(d) and s. 157.115(2)(f). The total amount deposited must equal 15% of the total amount of all payments of principal that have been received, but not less than \$25.

**157.12(3) CARE FUND FOR MAUSOLEUMS.** (a) Any person who operates a public mausoleum shall establish a care fund as follows:

1. If the mausoleum has been in existence since June 15, 1933, and is covered by the care fund of the cemetery in which the mausoleum is located, the cemetery shall deposit at least 15% of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equals 10% of the cost of constructing the mausoleum.

2. Except as provided in subd. 1, the operator of the mausoleum shall deposit at least 25% of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equals 25% of the cost of constructing the mausoleum.

3. The operator shall make deposits required under subds. 1 and 2 within 30 days after the last day of the month in which the payment is received. The municipality in which the mausoleum is located may, by ordinance, require a larger fund, but only if the department notifies the municipality in writing that the department approves of the requirement. The department may promulgate rules establishing uniform standards for approvals under this subdivision.

(b) The cemetery's treasurer is the custodian of the fund. The treasurer shall file with the cemetery, at the cemetery's expense, a bond with sureties approved by the department of regulation and licensing in indemnify the cemetery against loss if the treasurer fails to maintain the fund. No indemnity is required if the terms of sale of a mausoleum space require the purchaser to pay directly to a trust company in the state, designated by the cemetery as custodian of the fund. The fund shall be invested as provided in s. 157.19. Income from investment may be used only to maintain the mausoleum, except that if the amount of income exceeds the amount necessary to properly maintain the mausoleum the excess amount may be used to maintain any portion of the cemetery.

**440.92 CEMETERY PRENEED SELLERS. (2) PRENEED SALES CONTRACTS.** (a) A preneed sales contract for the sale of cemetery merchandise shall provide for the delivery of cemetery merchandise in one of the following ways:

1. By physically delivering the merchandise to the purchaser or the beneficiary named in the preneed sales contract.

2. By affixing the cemetery merchandise to the cemetery lot or mausoleum.

3. By storing the cemetery merchandise in a warehouse that is located on the property of the preneed seller if the preneed seller insures the cemetery merchandise and the preneed sales contract requires the preneed seller to ultimately affix the cemetery merchandise to the cemetery lot or mausoleum without additional charge.

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3g. By storing the cemetery merchandise anywhere on the property of the preneed seller if the property of the preneed seller is located in this state, the preneed seller insures the cemetery merchandise and the preneed sales contract requires the preneed seller to ultimately affix the cemetery merchandise to a cemetery lot, to the outside of or the grounds surrounding a mausoleum or to any other outdoor location without additional charge.

4. By having the cemetery merchandise stored in a warehouse that is not located on the property of the preneed seller if the warehouse has agreed to ship the cemetery merchandise to the preneed seller, purchaser or beneficiary named in the preneed sales contract without additional charge to the purchaser and the preneed sales contract requires that the cemetery merchandise ultimately be affixed to the cemetery lot or mausoleum without additional charge. If the cemetery merchandise is delivered under this subdivision, all of the following apply:

a. At the time that the preneed sales contract is entered into, the preneed seller shall provide the purchaser with the name, address and telephone number of the warehouse and inform the purchaser that the warehouse is approved by the department.

b. If the name, address, telephone number or approval status of the warehouse changes before the cemetery merchandise is delivered, the preneed seller or warehouse shall notify the purchaser in writing of each change within 30 days after the change.

c. The preneed sales contract shall provide the cemetery merchandise to be delivered within 30 days after the purchaser or beneficiary requests the preneed seller or warehouse to deliver the cemetery merchandise and shall contain the procedure and any requirements for making the request.

(am) If a preneed sales contract for the sale of cemetery merchandise requires the preneed seller to ultimately affix the cemetery merchandise to a cemetery lot, mausoleum or other location but the purchaser has not informed the preneed seller of the location where the cemetery merchandise is to be affixed and the location where the cemetery merchandise is to be affixed is not specified in the preneed sales contract, the preneed sales contract may provide that the preneed seller may charge the purchaser an additional fee at the time that the cemetery merchandise is affixed not to exceed the additional costs to the preneed seller that are necessitated by the purchaser's choice of location.

(b) If a preneed sales contract does not require the preneed seller to deliver cemetery merchandise by one of the methods under par. (a), the preneed seller shall deliver the cemetery merchandise under par. (a)2.

(c) Except as provided in par. (cm), a preneed sales contract shall provide that if the purchaser voids the preneed sales contract at any time within 10 days after the date of the initial payment the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser for cemetery merchandise that has not been supplied or delivered and for the mausoleum space.

(cm) If a preneed sales contract for the sale of cemetery merchandise requires the preneed seller to physically alter any cemetery merchandise, the preneed sales contract shall provide that if the purchaser voids the preneed sales contract at any time before the preneed seller has physically altered the cemetery merchandise in a manner or to a degree that makes the fair market value of the cemetery merchandise to the general public lower than the sale price of the cemetery merchandise under the preneed sales contract or within 10 days after the date of the initial payment, whichever occurs first, the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser for cemetery merchandise that has not been supplied or delivered.

(d) A preneed seller may not sell any undeveloped space unless the plans for the construction of the mausoleum have been submitted to the department of industry, labor and human relations for approval under s. 157.12(2)(a) and the preneed sales contract includes the following language in not less than 10-point boldface type: "THE PLANS FOR CONSTRUCTING THE MAUSOLEUM SPACE HAVE BEEN SUBMITTED TO THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS FOR APPROVAL. THE SELLER IS RESPONSIBLE FOR ALL COSTS REQUIRED TO OBTAIN APPROVAL OF THE PLANS BY

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THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS, COMPLETE THE CONSTRUCTION, AND OBTAIN CERTIFICATION OF THE CONSTRUCTION BY THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS."

(e) A preneed sales contract for the sale of an undeveloped space shall provide that the purchaser may void the preneed sales contract if any of the following conditions applies:

1. The plans for constructing the mausoleum are not approved under s. 157.12(2)(a).
2. The construction of the mausoleum does not begin within 3 years after the date of the sale.
3. If the mausoleum is a public mausoleum, the construction of the mausoleum is not certified under s. 157.12(2)(b) within 6 years after the date of the sale.

(f) If a preneed sales contract is voided under par. (e), the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under s. 138.04.

(g) A preneed seller may include in a preneed sales contract provision that do any of the following:

1. Place restrictions on the right of the purchaser to assign his or her interest in any undelivered cemetery merchandise or undeveloped space to any other person, but only if such restrictions are consistent with regulations, established by the cemetery authority of the cemetery in which the cemetery merchandise will ultimately be affixed or in which the undeveloped space is located, that specify who may or may not be buried in the cemetery.

2. Require the purchaser to notify the preneed seller that the purchaser has assigned his or her interest in any undelivered cemetery merchandise or undeveloped space to any other person within a reasonable period of time after the interest has been assigned.

(h) A provision in a preneed sales contract that purports to waive or is in conflict with any part of this section is void.

(i) If a preneed sales contract includes provisions for the sale of cemetery merchandise or an undeveloped space that is subject to the trusting requirements under sub. (3)(a) and (b) and for the sale of other goods or services that are not subject to the trusting requirements under sub. (3)(a) and (b), the sale price of the goods or services that are not subject to the trusting requirements may not be inflated for the purpose of allocating a lower sale price to the cemetery merchandise or undeveloped space that is subject to the trusting requirements.

(j) A preneed sales contract shall be in writing. The preneed seller shall provide the purchaser with a copy of the preneed sales contract at the time that the preneed sales contract is entered into. A provision in a written preneed sales contract that limits the terms of the transaction to those included in the written preneed sales contract and that disclaims any oral agreements pertaining to the transaction creates a refutable presumption that no oral preneed sales contract pertaining to the transaction exists. A preneed sales contract that is not in writing may not be voided by the preneed seller, but may be voided by the purchaser at any time before all of the cemetery merchandise purchased has been delivered, before the plans for constructing the mausoleum have been approved under s. 157.12(2)(a) or, if the mausoleum is a public mausoleum, before the construction of the mausoleum has been certified under s. 157.12(2)(b). If a preneed sales contract is voided under this paragraph, the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under s. 138.04.

(k) A preneed sales contract shall include the following language in not less than 10-point boldface type: "SECTION 440.92(2) OF THE WISCONSIN STATUTES SPECIFIES THE RIGHTS OF THE PURCHASER UNDER THIS CONTRACT. DEPENDING ON THE CIRCUMSTANCES, THESE MAY INCLUDE THE RIGHT TO VOID THE CONTRACT AND RECEIVE A REFUND OR THE RIGHT TO ASSIGN AN INTEREST IN THE CONTRACT TO ANOTHER PERSON."

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**(3) DEPOSITS IN PRENEED TRUST FUND AND CARE FUND.** (a) A preneed seller shall deposit into a preneed trust fund an amount equal to at least 40% of each payment of principal that is received from the sale of cemetery merchandise under a preneed sales contract, or the wholesale cost ratio for the cemetery merchandise multiplied by the amount of the payment of principal that is received, whichever is greater. In addition to the amount required to be deposited under this paragraph for the sale of cemetery merchandise and except as provided in par. (c), if a preneed seller receives payment for the sale of an undeveloped space under a preneed sales contract, the preneed seller shall deposit a percentage of each payment of principal that is received from the sale of the undeveloped space into a preneed trust fund, determined as follows:

1. If the actual cost to the preneed seller of constructing the undeveloped space in accordance with construction plans approved under s. 157.12(2)(a) has been determined by a registered architect or engineer and accepted in a written construction agreement by both the preneed seller and the person who has agreed to construct the mausoleum, the minimum percentage of each payment of principal that must be deposited into the preneed trust fund is the percentage equal to the wholesale cost ratio for the undeveloped space. In this subdivision, "registered architect or engineer" means a person who is registered as a architect or engineer under ch. 443.

2. If the cost to the preneed seller of constructing the undeveloped space has not been determined as provided in subd. 1, the preneed seller shall deposit at least 40% of each payment of principal into the preneed trust fund.

(b) The preneed seller shall make the deposits required under par. (a) within 30 business days after the last day of the month in which each payment is received. Preneed trust funds shall be deposited and invested as provided in s. 157.19.

**(5) USE OF PRENEED TRUST FUNDS TO COVER COSTS OF CONSTRUCTION OR PARTIAL PERFORMANCE.** (a) Before the construction of a mausoleum for which a preneed trust fund has been established is certified under s. 157.12(2)(b), the trustee of the preneed trust fund shall, upon receipt of a written request for the release of a specified amount of the funds from the preneed seller and the person who is constructing the mausoleum, release the specified amount of the funds, but only if the request is accompanied by a sworn statement, signed by the preneed seller and the person who is constructing the mausoleum, certifying that the specified amount does not exceed the amount charged to the preneed seller by the person who is constructing the mausoleum for labor that has actually been performed and materials that have actually been used in the construction of the mausoleum, and does not include any cost for which preneed trust funds have been previously released under this paragraph.

(b) Before all of the terms of a preneed sales contract for the sale of cemetery merchandise are fulfilled, the trustee of the preneed trust fund shall, upon receipt of a written request for the release of a specified amount of the funds from the preneed seller, release the specified amount of the funds, but only if the request is accompanied by a sworn statement, signed by the preneed seller, certifying that the specified amount does not exceed the actual cost to the preneed seller for any cemetery merchandise that has actually been supplied or delivered and for any cemetery services that have actually been performed, and does not include any cost for which preneed trust funds have been previously released under this paragraph.